

# Exhibit 30





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1 JUSTICE SMITH: All right.

2 Mr. Yoder, please proceed.

3 MR. YODER: Thank you.

4 May it please the court, Michael Yoder for  
5 defendant and appellant Samsung Electronics. I am joined  
6 at counsel table by my partner, Anton Metlitsky.

7 JUSTICE SMITH: I think we saw you the other day,  
8 did we not?

9 MR. METLITSKY: You did.

10 JUSTICE SMITH: Welcome. Nice to see you again.

11 MR. METLITSKY: Thank you.

12 MR. YODER: So I hope you take it easier on me  
13 than you did on my partner.

14 JUSTICE SMITH: Oh, we were gentle.

15 MR. YODER: So with the court's permission, I  
16 would like to reserve five minutes for rebuttal and to  
17 address any questions or issues that come up on the  
18 cross-appeal that may be argued during the respondent's  
19 argument.

20 JUSTICE SMITH: Okay.

21 MR. YODER: The district court held at summary  
22 judgment that Netlist had properly terminated the parties'  
23 Joint Development and Licensing Agreement because of  
24 Samsung's purportedly material breaches of Section 6.2 and  
25 Section 3 of the JDLA.

1                   MR. YODER: Yeah, and so but that also goes to  
2 materiality. One, it goes to whether there's a breach; it  
3 also goes to whether it's material.

4                   Did Netlist really believe it was material when  
5 they sat on it for five years and didn't declare a breach?

6                   And when finally the higher Korean tax authority  
7 overruled the lower Korean tax authority, was there a  
8 breach when the lower Korean tax authority agreed with  
9 Samsung? It's nonsense. It can't be.

10                  But when the higher authority decides there's a  
11 refund, with interest, there's nothing to cure; but yet  
12 under the district court's interpretation, Samsung's out  
13 of luck. Never could have cured, never given a chance to  
14 cure, but there's this strict liability based upon what is  
15 determined five years later.

16                  So not a breach, but also that should have gone  
17 to the jury on materiality.

18                  JUSTICE SMITH: Well, I gather from Samsung's  
19 perspective, if there's ambiguity and if Section 6.2 is  
20 interpreted the way you think it should, considering the  
21 totality of the circumstances, the tax gets reversed as  
22 well because there's no ambiguity there, it's not strict  
23 liability and the declaratory relief gets overturned  
24 because the others didn't happen. Is that correct?

25                  MR. YODER: Right. That's our position,

1 Your Honor. But even if the court doesn't agree that that  
2 should be the outcome, there needs to be a remand and a  
3 trial on these issues for sure.

4 And that's true as to materiality on 6.2 as well,  
5 and where I was going with that, when you go through the  
6 briefing on the issue of materiality, Netlist's argument  
7 was really, it was material because the supply obligation  
8 was a primary consideration for getting these licenses.

9 Well, number one, if you look at the JDLA and you  
10 look at the recitals, the recitals are very clear -- and  
11 parties put recitals in agreements to make sure language  
12 isn't tortured down the road by lawyers and courts, right?

13 Here's what our purpose is, interpret this  
14 agreement consistent with our purpose.

15 And when you look at the recitals, what does it  
16 say about the licenses?

17 Whereas in connection with their collaboration  
18 hereunder, the parties wish to grant to each other a  
19 cross-license under each party's patents.

20 The licenses are being given in connection with  
21 the collaboration. That's the joint development project.

22 And Netlist got a whole bunch of consideration in  
23 addition to this supply obligation.

24 If there were an unlimited supply obligation, it  
25 would be called out in some fashion.

1 JUSTICE SMITH: Do you want to save -- I thought  
2 you said you want to say five minutes.

3 It's up to you entirely, of course.

4 MR. YODER: No, and I am watching the clock,  
5 Your Honor, because I got a sense we need to do that.

6 But the thing I would say, though, just on the  
7 materiality, is that when you look at the record before  
8 Judge Scarsi on the 6.2 issue in materiality, Netlist's  
9 argument was that the supply obligation was the primary  
10 benefit that it received, and Judge Scarsi agreed with  
11 that. He said this was integral, this was a key  
12 component, and he made a factual finding based upon  
13 essentially a post hoc declaration by Netlist's CEO, and  
14 he disregarded all the other evidence in the record as to  
15 whether this was the primary benefit.

16 JUSTICE AMON: So it wasn't an undisputed fact?

17 MR. YODER: Pardon?

18 JUSTICE AMON: It wasn't an undisputed fact,  
19 then? In other words, the fact.

20 MR. YODER: It was disputed. It was disputed.

21 JUSTICE AMON: The fact was disputed?

22 MR. YODER: Very much disputed, yeah, whether --

23 JUSTICE DESAI: He shouldn't have resolved it  
24 against you because it was disputed?

25 MR. YODER: Yeah, absolutely not. I mean, even

1 of which is damages; the others are contract, Netlist  
2 performance, Samsung's breach.

3 But what the district court did when he said,  
4 here's my ruling on summary judgment, it was as to three  
5 elements. It wasn't as to liability as a whole, it was  
6 existence of contract, performance of contract, and  
7 Samsung's breach of the supply provision. That's 1ER41.

8 And in response to a summary judgment motion that  
9 identifies three elements and says we want summary  
10 judgment on those, I don't believe that Rule 56 requires a  
11 defendant to put in affirmative defenses.

12 JUSTICE SMITH: Okay.

13 MR. YODER: Thank you so much.

14 JUSTICE SMITH: Any other questions by my  
15 colleagues? Thanks to counsel.

16 MR. YODER: Thank you.

17 JUSTICE SMITH: This is an interesting case. We  
18 appreciate the preparation on your argument.

19 The case just argued is submitted, and I'm  
20 pleased to say that the court is adjourned for the week.

21 THE BAILIFF: All rise.

22 Court for this session stands adjourned.

23 (End of recording.)

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